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HUMAN RIGHTS COMMITTEE
Sixty-fourth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Belgium

1. The Committee considered the third periodic report of Belgium (CCPR/C/94/Add.3) at its 1706th and 1707th meetings (CCPR/C/SR.1706-1707) held on 22 October 1998 and adopted the following concluding observations at its 1720th meeting (CCPR/C/SR.1720) held on 2 November 1998.

A. Introduction

2. The Committee expresses its appreciation to the State party for its comprehensive report, as well as for its very useful core document. It welcomes the open and self-critical approach taken by the State party in the preparation of the report, and notes the involvement and collaboration of many national institutions and universities. It observes, however, that while the report provides details on the legal order, it contains little information on actual practice. The Committee welcomes the additional data provided by the delegation from the capital and its readiness to provide written answers to pending questions.

B. Positive aspects

3. The Committee commends the establishment of institutions aimed at monitoring the observance of human rights by State authorities, including the Centre for Equality and Against Racism (Centre pour l'égalité et pour la lutte contre le racisme) and the committee to monitor the police services, with jurisdiction over all branches of the police force.

4. The Committee notes with satisfaction the establishment of the Council on Equal Opportunities for Men and Women. It notes that the participation of

women in public affairs has increased since the previous report, but requests that more detailed information on women's participation in the workforce be made available in the next periodic report.

5. The Committee welcomes the ongoing measures to reform the judicial system undertaken by the State party, in particular those aimed at strengthening the independence of the judiciary through the establishment of Supreme Judicial Council and a Council of Attorneys-General. The new law on the recruitment of judges and the increase in the number of judges constitute positive developments. Furthermore, penal procedures have been improved with regard to the gathering of information and investigations, and the handling o information by the police. The role of the police and of the investigating judge have been better defined. The Committee welcomes the abrogation of the Act of 11 July 1994 with a view to modernizing the criminal justice system an reducing the backlog in the courts of appeal.

6. The Committee takes note of new instructions relating to the methods an techniques under which deportations are carried out.

7. The Committee notes with satisfaction that children of illegal immigrants are entitled to education and medical care.

8. The Committee considers it a positive sign that unaccompanied minors seeking asylum are not sent back to their countries of origin, unless their safety is guaranteed.

9. With regard to the extradition of asylum seekers, the Committee welcome the assurances by the delegation that extradition procedures are suspended until the asylum determination procedures are concluded.

10. The Committee welcomes the fact that Belgium has started the procedure for ratifying the Second Optional Protocol to the Covenant aiming at the abolition of the death penalty.

11. The Committee welcomes the establishment of an inter-ministerial committee with competence over trafficking in persons, prostitution and pornography, as well as the adoption of other legislative measures with extraterritorial application. It also welcomes the enactment of new laws aimed at combating more effectively the traffic in minors.

12. The Committee welcomes measures taken by the State party to improve prison conditions, in particular by introducing alternative forms of punishment and building new establishments to alleviate overcrowding.

C. Principal subjects of concern and recommendations

13. The Committee expresses its grave concern over the reports of widespread police brutality against suspects in custody. It regrets the lack of transparency in the conduct of investigations on the part of police authorities and the difficulty in obtaining access to this information.

14. The Committee is concerned about the behaviour of Belgian soldiers in Somalia under the aegis of the United Nations Operation in Somalia (UNOSOM II), and acknowledges that the State party has recognized the applicability of the Covenant in this respect and opened 270 files for

purposes of investigation. The Committee regrets that it has not received further information on the results of the investigations and adjudication of cases and requests the State party to submit this information.

15. Procedures used in the repatriation of some asylum seekers, in particular the placing of a cushion on the face of an individual in order to overcome resistance, entails a risk to life. The recent case of a Nigerian national who died as a consequence of such techniques illustrates the need to re-examine the whole procedure of forcible deportations. The Committee would like to receive written information on the results of the investigations as well as of any criminal or disciplinary proceedings. It recommends that all security forces concerned in effecting deportations should receive special training.

16. The Committee regrets that Belgium has not withdrawn its reservations to the Covenant and urges the Government to reconsider its position, in particular with regard to article 10. The Government's explanation that the reservation is necessary because there is a problem of overcrowding in prisons is not persuasive. In addition, alternative sentencing, including community service, should be encouraged in view of its rehabilitative function.

17. Community services and parole should be monitored and supervised in a more coherent way. The Committee encourages the Government to undertake an overall review of its sentencing policy and consequent training for the judiciary. The Committee is concerned that suspects do not at present have access to counsel and to medical visits from the moment of arrest. The Committee is also concerned about the non-application of judicial guarantees in administrative tribunals and other non-judicial entities. Suspects should be promptly informed of their rights in a language they understand.

18. The Committee is concerned about the length of pre-trial detention and about the high number of detainees in prisons who are still awaiting trial. The Committee reminds the State party that pursuant to article 9, paragraph 3, of the Covenant, pre-trial detention should be considered exceptional and must be justifiable. It urges the State party to review its rules and practice for granting bail. The Committee notes furthermore that the period of five months' detention, which may be extended to eight months, to which asylum seekers may be subjected, may amount to arbitrary detention in violation of article 9 of the Covenant, unless the detention is subject to judicial review which secures the release of the person if there is no lawful purpose being served by the detention.

19. Bearing in mind that pursuant to article 10, paragraph 3, of the Covenant, the essential aim of incarceration should be the reformation and social rehabilitation of offenders, the Committee urges the State party to develop rehabilitation programmes both for the time during imprisonment and for the period after release, when ex-offenders must be reintegrated into society if they are not to become recidivists.

20. The Committee considers that the current jurisprudence of the Court of Cassation stating that no judicial guarantees apply to the pre-trial stage is inconsistent with the Covenant; consequently, these guarantees should be extended to the pre-trial stage.

21. The Committee expresses grave concern about the retention of article 53 of the Act of 8 April 1965 on the protection of young persons, which entitles the authorities to incarcerate minors for a period of 15 days. This practice raises questions not only under article 10 but under articles 7 and 24 as well. Furthermore, the practice of not separating minors from adult offenders in jail is not only incompatible with article 10, paragraph 3, but constitutes a violation of article 24 of the Covenant.

22. While noting that the State party is taking measures to do away with the practice of keeping psychiatric patients in prison psychiatric annexes for several months before transferring them to hospitals that treat mental disorders (établissement de protection sociale), the Committee points out that this practice is incompatible with articles 7 and 9 of the Covenant and that it should be discontinued.

23. The Committee expresses its concern about the distinction made in Belgian legislation between freedom of assembly and the right to demonstrate, which is excessively restricted. It recommends that such differentiation be abolished.

24. The Committee notes that the requirement of prior authorization for foreign channels on cable networks is not entirely in conformity with article 19. The right to freedom of broadcasting should first be recognized; restrictions may be imposed as provided for in paragraph 3 of article 19.

25. The Committee notes that the procedures for recognizing religions and the rules for public funding of recognized religions raise problems under articles 18, 26 and 27 of the Covenant.

26. The Committee is concerned that the report gives very little information on the de facto situation of women. The Committee requests that the next report provide precise information on the outcome of measures to promote equality and to combat violence against women.

27. The Committee remains concerned about the production, sale and distribution of paedo-pornography. It urges the State party to take effective measures to curtail the possession and distribution of these criminal materials.

28. The Committee is concerned that provisions relating to fake marriages and to the expulsion of aliens may give insufficient protection to the right to marry and family life as recognized in articles 17 and 23 of the Covenant.

29. The Committee requests the State party to ensure the publication and wide dissemination in Belgium of the State party's report as well as of the Committee's concluding observations.

30. The Committee has fixed the date for submission of Belgium's fourth periodic report to be October 2002.